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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY DELGADO MORENO,

Defendant and Appellant.

F057923

(Super. Ct. No. VCF218924)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tulare County. Paul Anthony Vortmann, Judge.

Jonathan E. Berger, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Lloyd G. Carter and Louis M. Vasquez, Deputy Attorney Generals, for Plaintiff and Respondent.

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\* Before Wiseman, Acting P.J., Gomes, J., and Hill, J.

Appellant, Anthony Delgado Moreno, appeals from a jury conviction of attempted burglary, a felony (Penal Code, §§ 664/459, count one),<sup>1</sup> and impersonation of a police officer, a misdemeanor (§ 538d, subd. (b)(2), count two). The court found, by that conviction, Moreno had violated a prior three-year probation.<sup>2</sup> The court terminated probation and imposed a five-year term for the prior convictions. The court imposed a concurrent one-year term on the attempted burglary count, and a three-year term on the impersonation of a police officer count.

On appeal, Moreno challenges the sufficiency of the evidence to support the conviction on count two. Moreno also contends, and the People concede, the three-year prison term on the impersonation count was unauthorized. We conclude there was sufficient evidence for the jury to convict on impersonation of a police officer, and affirm the judgment. However, we remand for resentencing on that offense.

### **FACTS**

On March 16, 2009, Roberto Rosales (Rosales) drove home from work and saw Moreno attempting to unlock Rosales' car parked in the driveway. Moreno was using a tool resembling a "Slim Jim," a long flat piece of metal used to slide down between the window and rubber piece to pop the door locks open. Rosales turned on his headlights, and Moreno fled. Rosales shouted to his daughter, Christina Gonzales Rosales (Christina), who was inside the house, to call the police. Officer Karem Elbisi arrived, interviewed Rosales and Christina, and investigated the vehicle for fingerprints and the surrounding area for a Slim Jim. Officer Elbisi was unable to locate the Slim Jim, or any fingerprints on the vehicle, but observed that the rubber on the bottom of the

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<sup>1</sup> Further statutory references are to the Penal Code.

<sup>2</sup> A companion case involving the same defendant, Tulare County Superior Court case number VCF207340, is on appeal as case number F059031.

driver's side window had been pushed down, indicating it had been disturbed by some type of object.

Three days later on March 19, 2009, Rosales encountered Moreno on the sidewalk in front of Rosales' house and confronted him about attempting to steal his car. Moreno denied the incident, and told Rosales he was a police officer from a casino. Rosales' daughter, Claudia Rosales (Claudia), arrived while Rosales and Moreno were "arguing." Claudia spoke with Moreno, who said he was a police officer from Lemoore. Christina came out of the house during the confrontation and asked Moreno to show some identification that he was "a cop," but he did not.

Christina again called the police. Officer Isabel Yarber arrived after Moreno had left, and obtained his description from Rosales. Officer Yarber located Moreno nearby and brought him to Rosales, who identified him as the man who had tried to break into his car. Another officer searched Moreno's rented room, and retrieved a badge, uniform shirt, two handcuff keys, pepper spray holders, and a belt. Moreno's explanation for having these items was he worked for a private security company in Tulare County. He was "paid under the table" without pay stubs. He did not name his employer or a company contact person. Moreno also did not have a security guard identification card.

Christina testified that "on a Friday night" prior to March 19, 2009, Moreno approached her and her mother with a flashlight stating he was "a cop" from Lemoore and he was "just looking out, you know, through your neighborhood." Moreno was not wearing a badge that day, but Christina had "seen him before, like walking around our neighborhood, like dressed real nice with one of those belts and with a badge."

At the close of evidence, Moreno moved to dismiss both counts for insufficient evidence under section 1118.1. The trial court denied the motion. The jury convicted Moreno of attempted burglary and impersonating a police officer.

During sentencing on June 5, 2009, the trial court found Moreno had violated his probation and imposed a term of five years for the prior offenses. The court imposed a concurrent one-year term on count one, and a three-year term on count two. The minute order and abstract of judgment, however, reflect the court imposed “no time” on count two.

## **DISCUSSION**

### **1. Substantial Evidence**

#### **a. *Standard of Review***

When the sufficiency of the evidence is challenged, the reviewing court examines the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence — that is, evidence which is reasonable, credible, and of solid value — such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)

In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. (*Ibid.*) Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. (*Ibid.*)

#### **b. *Impersonation of a Police Officer by Use of a Badge***

Section 538d, subdivision (b)(2), provides in pertinent part, “Any person who willfully wears or uses any badge ... which so resembles the authorized badge of a peace officer as would deceive any ordinary reasonable person into believing that it is authorized for the use of one who by law is given the authority of a peace officer, for the purpose of fraudulently impersonating a peace officer, or of fraudulently inducing the belief that he or she is a peace officer, is guilty of a misdemeanor ....”

Accordingly, the trial court properly instructed that to convict, the jury must find beyond a reasonable doubt that Moreno (1) wore or used a badge, (2) which resembled a badge of a peace officer as would deceive a reasonable person, (3) with the intent of fraudulently impersonating a peace officer, or of fraudulently inducing the belief that he is a peace officer. Moreno challenges the sufficiency of the evidence to support the intent element of the offense. We conclude there is sufficient evidence of all three elements.

**(1) Wore or Used a Badge**

Christina testified she saw Moreno wearing a badge “walking around our neighborhood.” On cross-examination, she was asked, “At some point, though, you do think you saw a badge on this [Moreno]?” She confirmed, “Uh-huh, I did.” Christina’s testimony was corroborated by Officer Frick who located a security badge in Moreno’s rented room, which was admitted into evidence at trial. There was sufficient evidence that Moreno wore or used a badge to satisfy the first element of the impersonation offense.

**(2) Resembled a Police Badge**

The badge was silver in color and said “security,” in contrast to a peace officer’s badge that is gold in color. Contending a silver badge does not adequately resemble a gold peace officer’s badge, Moreno moved for dismissal of the impersonation charge pursuant to section 1118.1. The trial court denied the motion, explaining it was unable to conclude on the totality of the evidence that no reasonable person would believe the badge was authorized for use by a peace officer. We agree. Section 538d, subdivision (b)(2), provides it is enough the badge “would deceive *any* ordinary reasonable person.” (Emphasis added.) A rational jury could conclude that an ordinary reasonable person would not be aware of the difference between a silver security badge and a gold peace officer badge. A rational jury could also find that the word “security” on the badge would nonetheless deceive an ordinary reasonable person that the badge was that of a

peace officer. Under these circumstances, the trial court correctly denied Moreno's section 1118.1 motion.

### **(3) Fraudulent Intent**

Moreno challenges the third element, contending there is no evidence he expressly claimed he was a police officer while wearing the badge. Moreno argues that this fact alone should defeat the jury's finding of requisite intent to convict. We disagree.

Contrary to Moreno's contentions, there is no requirement under section 538d, subdivision (b)(2), that the defendant must expressly claim he is a police officer while wearing the badge to satisfy the specific intent necessary to convict. In construing a statute, we must defer to the usual, ordinary import of the language employed. If the words of the statute are clear, we should not add to or alter them. (*In re David L.* (1991) 234 Cal.App.3d 1655, 1658, citing *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698.) We must follow the language used and give to it its plain meaning. (*People v. Weidert* (1985) 39 Cal.3d 836, 843.) Section 538d, subdivision (b)(2), requires the defendant to have intended to "fraudulently impersonate" or "fraudulently induce the belief" that he is a peace officer. The wearing of the badge must simply be contemporaneous with the intent to defraud.

The question then is whether the evidence was sufficient to find Moreno possessed the requisite intent to defraud on the occasion when he wore the badge. "The jury may infer a defendant's specific intent to commit a crime from all of the facts and circumstances shown by the evidence." (*People v. Lindberg* (2008) 45 Cal.4th 1, 27; See also, *People v. Bloom* (1989) 48 Cal.3d 1194, 1208 ["Evidence of a defendant's state of mind is almost inevitably circumstantial, but circumstantial evidence is as sufficient as direct evidence to support a conviction"].) The fact that no witnesses testified that Moreno claimed to be a police officer while wearing the badge does not preclude a finding of the requisite intent. The jury was entitled to consider Moreno's repeated

assertions that he was a police officer on other occasions as evidence of his intent on the occasion he was seen wearing the badge. (Evid. Code, § 1101, subd. (b).)

In *People v. Gonzales* (2003) 114 Cal.App.4th 560, the court found substantial evidence of the defendant's intent to falsely represent himself as a public official. In *Gonzales*, the defendant and his passenger approached the victim who had just driven his pickup truck into a light pole. Either defendant or his passenger said, "May we see some ID, sir." When the victim took out his wallet, the passenger grabbed the wallet and struck him. Eight days later, defendant and another passenger approached another victim who was attempting to tow his car. The men claimed to be "undercover cop[s]" and demanded, "Let me see your ID." The defendant contended there was insufficient evidence to show that he falsely represented himself during the earlier incident because he did not explicitly say he was an "undercover cop[]" as he did in the later incident. The court nonetheless concluded there was sufficient evidence to find intent to defraud. The "jury was entitled to consider the fact that one week later, defendant committed a similar offense under similar circumstances." (*Id.* at 570.)

Likewise here, the jury was entitled to consider Moreno's later statements as evidence of his intent while wearing the badge. Although no witness testified Moreno wore a badge while expressly claiming he was a police officer, three witnesses testified Moreno attempted to convince them he was a police officer. Claudia testified Moreno told her he was a police officer from Lemoore, while mentioning names of officers from Farmersville Police. Rosales testified Moreno told him he was a "police officer." Christina testified Moreno stated he was "a cop." And, on a separate "Friday night," said, "Oh, I'm a cop. And I'm just looking out, you know, through your neighborhood."

The jury was entitled to reject the explanations Moreno offered for his innocent use of the badge. Moreno argues it is possible he "was telling the truth about being employed as a security guard, and was wearing the badge because it was a requirement of

his job.” In so arguing, Moreno misconstrues the substantial evidence standard of review and asks this court to reweigh the evidence. Moreno’s explanation for having the badge, uniform shirt, two handcuff keys, pepper spray holders, and a belt was that he worked for a private security company in Tulare County. However, he could not name the company or a contact person for the company, claimed he was paid “under the table,” and did not have a security guard identification card. These facts could justify the inference that Moreno was not working as a security guard when he wore the badge. Accordingly, substantial evidence supports the conclusion of the jury on count two.

## **2. Unauthorized Sentence**

Moreno was convicted on count two of a misdemeanor under section 538d, subdivision (b)(2), requiring “imprisonment in a county jail not to exceed one year, by a fine not to exceed two thousand dollars (\$2,000), or by both that imprisonment and fine.” The trial court orally imposed a concurrent three-year term. The clerk’s minute order and abstract of judgment, however, reflect “no time imposed” on count two. Moreno contends the trial court imposed an unauthorized sentence so the matter must be remanded for resentencing. The People concede the sentence imposed is ambiguous. Under the circumstances, we will remand to the trial court for resentencing on count two.

## **DISPOSITION**

The matter is remanded to the trial court for resentencing on count two. Moreno need not be present for resentencing. (Pen. Code, § 1193, subd. (b), and see *People v. Price* (1991) 1 Cal.4th, 324, 407-408.) In all other respects, the judgment is affirmed.